

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

PHOEBE LEAL,

Plaintiff,

v.

COMPUTERSHARE F/K/A  
EQUISERVE, *et al.*,

Defendants.

Case No. 2:10-cv-00033-LDG (LRL)

**ORDER**

The plaintiff, Phoebe Leal, filed this action in state court. She alleges that the defendants, Computershare, Inc. and Colgate-Palmolive Company, improperly escheated her shares of Colgate Company stock to California. She alleges claims against both defendants for breach of fiduciary duty and intentional infliction of emotional distress. Computershare moves to dismiss (#9) Leal's claim for breach of fiduciary duty, asserting that it did not owe her a fiduciary duty. Leal opposes the motion (#14), and Computershare has filed a reply (#17). The Court will grant the motion.

**Motion to Dismiss**

The defendant's motion to dismiss, brought pursuant to Fed. R. Civ. P. 12(b)(6), challenges whether the plaintiff's complaint states "a claim upon which relief can be

1 granted.” In ruling upon this motion, the court is governed by the relaxed requirement of  
2 Rule 8(a)(2) that the complaint need contain only “a short and plain statement of the claim  
3 showing that the pleader is entitled to relief.” As summarized by the Supreme Court, a  
4 plaintiff must allege sufficient factual matter, accepted as true, “to state a claim to relief that  
5 is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955,  
6 1974 (U.S. 2007). Nevertheless, while a complaint “does not need detailed factual  
7 allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’  
8 requires more than labels and conclusions, and a formulaic recitation of the elements of a  
9 cause of action will not do.” *Id.*, at 555 (citations omitted). In deciding whether the factual  
10 allegations state a claim, the court accepts those allegations as true, as “Rule 12(b)(6)  
11 does not countenance . . . dismissals based on a judge’s disbelief of a complaint’s factual  
12 allegations.” *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). Further, the court “construe[s]  
13 the pleadings in the light most favorable to the nonmoving party.” *Outdoor Media Group,*  
14 *Inc. v. City of Beaumont*, 506 F.3d 895, 900 (9<sup>th</sup> Cir. 2007).

15       However, bare, conclusory allegations, including legal allegations couched as  
16 factual, are not entitled to be assumed to be true. *Twombly*, 550 U.S. at 555. “[T]he tenet  
17 that a court must accept as true all of the allegations contained in a complaint is  
18 inapplicable to legal conclusions.” *Ashcroft v. Iqbal* 556 U.S. \_\_\_, 129 S.Ct. 1937, 1949  
19 (2009). “While legal conclusions can provide the framework of a complaint, they must be  
20 supported by factual allegations.” *Id.*, at 1950. Thus, this court considers the conclusory  
21 statements in a complaint pursuant to their factual context.

22       To be plausible on its face, a claim must be more than merely possible or  
23 conceivable. “[W]here the well-pleaded facts do not permit the court to infer more than the  
24 mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—that the  
25 pleader is entitled to relief.” *Id.*, (citing Fed. R. Civ. Proc. 8(a)(2)). Rather, the factual  
26 allegations must push the claim “across the line from conceivable to plausible.” *Twombly*.

1 550 U.S. at 570. Thus, allegations that are consistent with a claim, but that are more likely  
2 explained by lawful behavior, do not plausibly establish a claim. *Id.*, at 567.

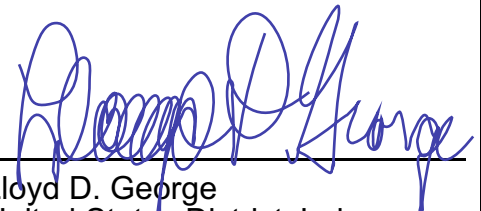
3 Analysis

4 Leal alleges that Comptureshare, acting as the transfer agent for Colgate-Palmolive,  
5 improperly escheated her Colgate Company shares to California. She argues that,  
6 pursuant to California's Unclaimed Property Law, codified at California Code of Civil  
7 Procedure §1500 *et seq.*, Computershare owed her a fiduciary duty to provide her notice  
8 before escheating the property. Having reviewed the relevant statutory provisions cited by  
9 Leal, the Court finds that the statutes preclude a finding that they establish a fiduciary duty  
10 that Computershare owed to Leal to provide notice that her Colgate Company shares were  
11 subject to being escheated to California as unclaimed property.

12 As argued by Leal, this matter is governed by §1516, as the property escheated was  
13 comprised of securities. Pursuant to §1516(b), a "business association shall be deemed  
14 the holder" of person's intangible interests in the business association. As Colgate-  
15 Palmolive is deemed the holder of Leal's Colgate Company shares, §1516 did not impose  
16 a duty upon Computershare to notify Leal that her interest in Colgate Company shares  
17 would escheat to California as unclaimed property. As Computershare did not owe a duty  
18 to Leal, she cannot maintain a claim against Computershare that the failure to provide the  
19 notice required by §1516 constituted a breach of a fiduciary duty it owed her. Accordingly,

20 THE COURT **ORDERS** that Computershare, Inc.'s Motion to Dismiss (#9) is  
21 GRANTED. Plaintiff's First Claim for Breach of Fiduciary Duty is DISMISSED with  
22 prejudice as to defendant Comptureshare, Inc.

23 DATED this 23 day of September, 2010.

24  
25   
26 Lloyd D. George  
United States District Judge